

payors' pockets, as against taxes that would be coming in if the jobless were back on regular payrolls.

A 6 per cent standard for full employment would be a prescription for social unrest and permanent government deficits. The nation cannot accept the defeatist conclusion that one worker out of every sixteen must be permanently shut out of the labor market. There is no stability for either people or prices in such a design.

# THE HEALTH REVENUE SHARING AND HEALTH SERVICES ACT

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 23, 1975

Mr. RHODES. Mr. Speaker, I have received a letter from Secretary Weinberger of the Department of Health, Education, and Welfare, indicating his opposition to H.R. 4925, the Health Revenue Sharing and Health Services Act.

The letter specifies the specific areas that HEW opposes in this legislation. For the benefit of my colleagues when this legislation is considered on the floor, I am taking the liberty of inserting Secretary Weinberger's letter in the RECORD. The text follows:

THE SECRETARY OF HEALTH,  
EDUCATION, AND WELFARE,  
Washington, D.C., April 22, 1975.

Hon. JOHN RHODES  
Minority Leader, House of Representatives,  
Washington, D.C.

DEAR MR. RHODES: We expect that H.R. 4925, the Health Revenue Sharing and Health Services Act, will soon be reported by the Interstate and Foreign Commerce Committee for consideration by the House. I enclose a copy of the President's Memorandum of Disapproval of H.R. 14214 (93rd Congress), a bill very similar to H.R. 4925. I would like to reiterate again the Department's strong opposition to this legislation and strongly recommend that the Congress enact H.R. 4819, the Administration's health services amendments.

Although some changes have been made at the Subcommittee level, we do not believe that significant progress has been made toward overcoming any of the Administration's basic objections. The Subcommittee on Health and Environment did attempt to lower authorizations, and this is a step in the right direction. But the authorizations in H.R. 4925 still are far in excess of the President's budget and, therefore, remain objectionable to the Administration. The total authorizations for this three-year bill are almost \$2.5 billion, approximately \$1 billion over the President's budget for FY '75, and FY '76 and estimated budget for FY '77.

Moreover, the Department has consistently expressed its opposition to H.R. 4925 for programmatic reasons. Since the bill would extend and authorize a number of new categorical programs and repeal the general health research and development authority in section 314(e) of the Public Health Service Act, the Department continues to oppose this legislation on both programmatic and fiscal grounds.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's program, and that enactment of H.R. 4925 would not

be in accord with the program of the President.

Sincerely,

CASPAR W. WEINBERGER,  
Secretary.

## MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H.R. 14214, the "Health Revenue Sharing and Health Services Act of 1974."

H.R. 14214 conflicts with my strong commitment to the American taxpayers to hold Federal spending to essential purposes. The bill authorizes appropriations of more than \$1 billion over my recommendations and I cannot, in good conscience, approve it. These appropriation authorizations are almost double the funding levels I have recommended for Fiscal Year 1975 and almost triple the levels I believe would be appropriate for 1976.

As part of my effort to see that the burden upon our taxpayers does not increase, I requested the Congress last month to exercise restraint in expanding existing Federal responsibilities, and to resist adding new Federal programs to our already overloaded and limited Federal resources. These recommendations reflect my concern with both the need to hold down the Federal budget and the need to limit the Federal role to those activities which can make the most necessary and significant contributions.

In H.R. 14214, the Congress not only excessively increased authorizations for existing programs but also created several new ones that would result in an unjustified expenditure of Federal taxpayers' funds. Although the purposes of many of the programs authorized in this bill are certainly worthy, I just cannot approve this legislation because of its effect upon the economy through increased unwarranted Federal spending.

Finally, it should be pointed out that the Federal Government will spend almost \$20 billion in 1975 through Medicare and Medicaid for the financing of health services for priority recipients—aged and low-income persons. These services are provided on the basis of national eligibility standards in Medicare and State eligibility standards in Medicaid and therefore are available to individuals in a more equitable and less restrictive manner than many of the programs authorized in H.R. 14214.

GERALD R. FORD.

THE WHITE HOUSE, December 21, 1974.

## POLYGRAPH TESTING

HON. EDWARD I. KOCH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 23, 1975

Mr. KOCH. Mr. Speaker, the reasons for supporting my bill, H.R. 2596 which places an absolute prohibition on polygraph testing in employment situations, are cogently set forth in the April 1975 issue of The Privacy Report published by the American Civil Liberties Union Foundation. This report needs no further elaboration by me and I am appending it for the information of our colleagues.

### THE PRIVACY REPORT

#### POLYGRAPH TESTING FOR EMPLOYMENT

The polygraph has been with us for over half a century. In its early years it was enthusiastically embraced by police officials, who placed great faith in its value for law

enforcement. But the courts proved resistant: not until 1972 did any federal court admit unstipulated polygraph evidence in a criminal case (that is, where there is no pre-trial agreement among all parties that polygraph evidence shall be admitted), and only one state court had done so. Even after the *Kidling* and *Zeiger* decisions of 1972, admitting unstipulated polygraph evidence, there was no great rush to extend judicial recognition to the polygraph, for many courts still had, and have, serious doubts about its validity and reliability as a detector of falsehood. (Unfortunately, the courts have shown greater skepticism for the polygraph's scientific validity than for its constitutional validity.) Nonetheless, the polygraph test is widely used "informally" in law enforcement, by police as an investigative aid, and by prosecutors and defendants as a tactical counter in plea-bargaining negotiations.

But for all the problems still to be faced in bringing the law enforcement uses of the polygraph under control, there is at least the hope that the pros and cons, including the constitutional arguments, will eventually be heard and judged in the courts. Meanwhile, the greatest growth in the use of the polygraph is taking place completely outside the criminal justice system, virtually free from effective judicial or legislative controls. The polygraph test has now become a popular method of screening applicants for employment, and of checking up on present employees. These are in fact the principal uses of the polygraph today.

Polygraph tests for employment are utilized in both the public and private sectors. Ten years ago, the House Subcommittee on Foreign Operations and Government Information found that 19 federal agencies had conducted a total of 19,769 tests in just one year, and this figure did not include the thousands of tests administered to applicants and employees by the Central Intelligence and National Security Agencies. Congressional expressions of disapproval led to the adoption of new Civil Service Commission regulations sharply limiting polygraphing by federal agencies, and in 1973 seven agencies reported a total of 6882, supposedly all related, as required by CSC rules, to national security needs. Again, this figure did not include CIA tests. There are no recent compilations for state and local agencies, but polygraphs are known to be widely used in pre-employment screening for police departments and law enforcement agencies of all kinds. In fact, many states which do place legal restrictions on employment polygraph testing except law enforcement agencies—sometimes all government agencies.

The figures for private employment are only rough estimates. A 1974 report by the staff of the Senate Subcommittee on Constitutional Rights mentioned a range of 200,000 to 300,000 a year; other estimates go even higher. But both supporters and opponents of the polygraph are agreed that the number is enormous, and constantly growing.

A researcher for the Privacy Report recently interviewed a number of large private employers to learn how they use the polygraph, what they expect from it, why they believe in it, and whether they feel that the tests might be jeopardizing their employees' rights. But before describing the results of these interviews, it is necessary to discuss some facts about the polygraph test itself.

#### How polygraph testing works

The polygraph, popularly known as the "lie detector," is a machine that measures and records fluctuations in blood pressure, rate of respiration, and galvanic skin response (changes in the electrical conductivity of the skin, thought to be related to the amount of perspiration in the skin). The theory behind the polygraph test is that the

Now, I am not suggesting that we close our doors to these individuals. Certainly, the United States has an obligation to many of these people, especially those who must flee because of past cooperation with our Government.

However, there are a few details I believe we should be aware of.

How many refugees are going to enter this country? Where are they going to stay?

Who is going to pay for their expenses while living in this country until they find employment?

As of now, no one really seems to know how many refugees to expect. Attorney General Edward Levi has said he will waive immigration laws for approximately 130,000 individuals. Yet Los Angeles County Supervisor James Hayes, a responsible public official, has stated that Federal officials have told him to be prepared for at least 600,000 Southeast Asian refugees, and possibly as many as one million.

At this point, I would like to enter into the Record two articles from the Los Angeles Times, which contain Supervisor Hayes' statements:

[From the Los Angeles Times, Apr. 22, 1975]

**L.A. ALERTED ON REFUGEE INFLUX**  
(By Ray Zeman)

Chairman James A. Hayes said Monday that federal officials are planning to bring from 600,000 to 1 million Southeast Asian refugees to the United States, with Los Angeles and San Francisco as the likely first ports of entry.

Hayes said he will ask the Los Angeles County supervisors today to prepare for such a situation.

The supervisor said word of the possible influx of refugees came from highly placed officials in Washington.

"I was asked not to divulge the names of the callers or the two departments from which they telephoned. They urged me to start plans and preparations.

"This program—if it becomes a reality, as it very well may—will be quite similar to the Cuban refugee operation.

"San Francisco and Los Angeles would probably be the first points of debarkation."

Hayes recalled that under the Cuban program, 600,000 Cubans were settled in the United States. At the peak in March, 1971, this program aided 11,615 in Los Angeles County.

More than half of these have since been transferred to federal programs for the aged, blind and disabled. The county is caring for the remaining 5,126.

Pointing out that the first wave of Southeast Asian immigrants may reach California "in the very near future," Hayes said he will ask the Board of Supervisors to request that federal funds and personnel be utilized to offset the burden on local taxpayers.

He also will move that all appropriate county departments immediately gear up for the possible mass influx and to provide status reports weekly on these preparations.

Hayes also will ask that Chief Administrative Officer Harry L. Hufford and other county officials explore the need for an advisory commission to assist the immigrants and the feasibility of forming such a commission if the proposed federal program becomes a reality.

"I would like a report on this within one week," Hayes emphasized.

[From the Los Angeles Times, Apr. 23, 1975]

**COUNTY TOLD: GET SET FOR REFUGEES**

Supervisors Chairman James A. Hayes said Tuesday he again talked to some "highly

placed officials in Washington" who urged that Los Angeles County prepare for the possible evacuation of 600,000 to 1 million Southeast Asian refugees to the United States.

"I was alerted that this is a contingency plan which might be put into effect on a moment's notice," Hayes said. "Most would be arriving without any visible means of support."

(Immigration officials in Washington Tuesday placed the maximum number of immigrants at 130,000.)

County supervisors adopted Hayes' motion to study formation of a commission to assist the immigrants if the proposed federal program becomes a reality. All appropriate county departments were directed to gear up for a possible influx.

Since Los Angeles and San Francisco would be the probable first ports of entry, Supervisor Baxter Ward said the military might have to reactivate some unoccupied barracks. He suggested use of El Toro Marine Air Station.

Hayes said El Toro is relatively small. "One of the major ones being considered is Edwards Air Force Base," he added.

Hayes' motion urged the federal government to provide funds and personnel to offset costs of local taxpayers if the Southeast Asian refugee program is inaugurated.

Now, Mr. Hayes is not an alarmist. He is a responsible public official trying to do his job. And apparently, that job is about to get very difficult.

Most of the refugees from Vietnam and other Southeast Asian nations will enter the United States through San Francisco and Los Angeles. And if past examples are any guide, many of them will be staying in those areas.

Mr. Speaker, I am not saying that these men, women, and children are not welcome. Certainly the people of Los Angeles will do all that is in their power to help these people start a new life.

However, starting and maintaining that new life is going to be expensive, and relief funds in great amounts will be needed. We theorize an eventual level of 600,000 refugees, and provide them with bare living expenses, the total will easily run over \$1 billion a year.

Obviously, such a massive drain on local government would be a disaster. The Federal Government must face the obligation of paying for the relocation and assistance of refugees after they have arrived in this nation, if the Federal Government makes it possible for them to arrive here.

**FULL EMPLOYMENT LEGISLATION**

**HON. AUGUSTUS F. HAWKINS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 23, 1975

Mr. HAWKINS. Mr. Speaker, I wish to call the attention of the Members to a very current and incisive editorial in the Wednesday, April 23, 1975, issue of the New York Times which in brief but comprehensive fashion treats the economic crisis confronting us, while at the same time pointing out how the legislation that Representative REUSS, Senator HUMPHREY, and I, along with over 90 of our colleagues in both bodies have in-

roduced would offer a solution to this crisis. We have no pride of authorship in our proposal, but we are only pleased that national attention has begun to be focused on a comprehensive approach to our economic sickness. The editorial follows:

**HOW MANY JOBLESS...**

It is a measure of the bankruptcy of economic thought that most economists, of all schools and political persuasions, believe the United States must resign itself to an unemployment rate of at least 6 per cent for the rest of this decade.

When President Kennedy made 4 per cent joblessness his target in the nation's pullout from the recession of 1960-61, he was at pains to stress that this was an interim goal and not to be viewed as an acceptable yardstick of normal employment. The popular wisdom among economists now is that the potential price in renewed inflation is too high to make even 4 per cent realistically attainable.

That is not a supportable "trade-off," to use the chilling term so glibly employed in current calculations. The reality is that the underpinnings of the calculations themselves are dubious in a period when none of the orthodoxies, whether those of Adam Smith or of John Maynard Keynes, offers much of a guide on how to balance price stability and full employment.

Even the notion that substantial levels of unemployment operate over the long haul as a significant brake on inflation is open to question in light of the rigidities of cost-of-living escalators and other wage boosters and the speed with which the over-all price index can be pushed by a single external development such as the oil cartel's quadrupling of fuel costs.

Moreover, the price of unemployment is high in terms other than the frustrations of the jobless and the loss to society of tens of billions of dollars in output. Unemployment insurance programs are being made more generous in both the amount and duration of benefits, with food stamps and welfare as supplemental cushions and mortgage and medical protection under consideration as well.

**... HOW MANY JOBS?**

Public service employment is mushrooming under pressure of the current emergency, and there will be strong pressure for permanent programs to provide government-financed work as a matter of right for those who will remain idle after the gross national product turns upward. The House Subcommittee on Equal Opportunities is studying a bill by Representatives Augustus Hawkins of California and Henry Reuss of Wisconsin, with 85 co-sponsors, that calls for a comprehensive—and expensive—national program to cut unemployment to 3 per cent within eighteen months.

The program, with an initial budget estimated at \$15 billion, would become the foundation for submission by the President each year of a "Full Employment and National Purposes Budget" that would guarantee jobs and define national priorities in such fields as conservation and development of national resources, health care, housing, mass transit, promotion of competitive private enterprise and the elimination of poverty.

Unquestionably a program formulated with such ambitious goals would vastly increase present rates of Federal outlay, quite possibly beyond the country's capacity; but it is worth remembering that the basic principle of the bill aims at putting into practice a policy that was adopted in theory by the Congress a quarter century ago. Any appraisal of its potential cost has to take into account that unemployment programs now under way are expected to cost in the neighborhood of \$40 billion. That is money going out of tax-

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act of lying causes psychological conflict, conflict causes fear, and fear brings about certain measurable physiological changes, which are detected and recorded by the polygraph. But both supporters and opponents graph machine.

However, contrary to the impression one might have from watching police shows on TV, the polygraph does not "detect" falsehood the way a Geiger counter detects radioactivity. No buzzer rings to signal the presence of untruth. The subject's physiological responses to the examiner's questions must be interpreted: it is the examiner's interpretation, not the machine, that determines whether a person "passes" the polygraph test.

Newer versions of the "lie detector"—the "wobble seat" that registers body temperature and muscle movements, the camera that records changes in the size of the pupil, and the futuristic Psychological Stress Evaluator (PSE) that measures the fluctuations of the FM modulation in the voice—all rest on the same premise, that lying produces stress which is translated into detectable physical changes in the body.

A number of difficulties are immediately apparent. First, the premise that lying causes stress is a shaky one. It does not if a person believes he is telling the truth, even if his statement is factually untrue. It does not if a person feels no guilt or anxiety about lying, or even gets enjoyment from lying. It does not if a person cannot be convinced that the polygraph detects lies and therefore does not fear that his deception will be unmasked. On the other hand, many things other than lying do cause stress: fear, guilt, anger, or embarrassment produced by truthful answers to the examiner's questions, neurotic anxieties, subconscious reactions triggered by a single chance word, tension created by the test procedure itself, or a physical condition such as heart trouble, a headache, a cold, fatigue, or even the need to go to the bathroom. All of these factors have been shown to distort the accuracy of the polygraph as a lie detector.

Second, because the polygraph measures reactions to an examiner's questions and its recordings are then interpreted by the examiner, the polygraph itself emerges as the key to the polygraph test. What are his qualifications? How is he trained? How much does he know about human emotional and physical response? What is his attitude toward the subjects he tests? Are there racial or cultural differences between them that might produce different ideas of what is "moral" or "true"? What are his biases? What predispositions (or outside pressures) does he have to find the subject "guilty" or "innocent"? How precisely can he frame questions to elicit pure "truth"? By what criteria does he decide whether a response recorded by the machine is a lie or a reaction to some other factor? Indeed, are there any wholly objective elements in the process at all, or is the entire business a matter of judgment?

Even with respect to the best polygraphers in the profession, the answers to these questions are disturbing. The most vocal supporters of the polygraph themselves stress the importance of a highly qualified examiner, yet in most states anyone who buys a polygraph machine can go into business. The 1974 Senate Subcommittee report noted ruefully that even the most reputable of the polygraph schools offers only 244 hours of instruction, including 14 hours in psychology and 31 in "medical aspects." One leading expert on polygraphs estimates that some 80% of the nation's practitioners, variously estimated as from 1200 to 3000, are incompetent.

How accurate is the polygraph in detecting liars? Its supporters claim an accuracy rate of 90-95% for tests performed by experienced examiners in the field (as opposed to laboratory experiments). Estimates from other sources are much lower. There is, in fact, no accepted scientific evidence of the polygraph's validity. An ACLU report on the polygraph

published in 1973 (Shattuck, Brown & Carlson, "The Lie Detector As a Surveillance Device," 75pp. \$1) concluded simply that the issue boils down to a battle of statistics, and that none of the statistics available are particularly reliable. A major difficulty in measuring the polygraph's performance is, of course, that verification is possible only in cases where there is independent evidence of the subject's veracity.

It must be stressed that the civil liberties objections to the polygraph are only incidentally a matter of the test's scientific validity, or lack of it. Even if a 100% reliable "lie detector" were to be developed, there would still be serious questions about invasion of privacy, violation of the Fifth Amendment privilege against self-incrimination, of the constitutional presumption of innocence until proven guilty, of the Sixth Amendment right to confront and cross-examine one's accusers, and of the Fourth Amendment protection against unreasonable searches—and, at bottom, assault on the fundamental dignity of the human personality. Alan Westin, discussing polygraphs in his book *Privacy and Freedom*, pointed out that the American constitutional system of due process has three purposes, only one of which is to discover truth; the others are to place limits on governmental power, and to preserve individual dignity.

How these constitutional and ethical issues are raised by the use of the polygraph for employment purposes may become clearer in the following paragraphs.

#### How employers use the polygraph: Interviews

A large car rental agency began to use polygraphs several years ago to combat an increasing problem of theft by employees. However, when thefts do occur, the polygraph is seldom used—only where no alternative means of investigation are available. Rather, the polygraph is used to screen applicants for jobs as service employees, the people who wash and prepare the cars and have the most contact with cars and money.

Prospective employees are not informed of the polygraph requirement on the application, or even, in some cases, until after the interview. Then they are simply given the address of a polygraph firm and told to report there for "a test." The agency's personnel department knows little of what goes on at the polygraph test; it accepts the results—a verdict of "recommended" or "not recommended"—from the polygraph examiner. The applicant is asked about his previous employment record, arrest record, involvement in thefts, and use of alcohol and drugs. The agency may also check the applicant's previous employers and references, but only if the polygraph test results prove satisfactory. No applicant who refuses a test will be considered.

The primary use of the test, according to the agency, is simply to check that people are telling the truth on their applications. It believes that this form of pre-employment screening has helped cut down internal thefts.

A wholesaler of drugs, liquor, and chemicals uses the polygraph to screen applicants for jobs in its warehouses and security forces. Sometimes it is used for investigating large internal thefts, but only as a last resort.

Applicants are told of the test requirement at the interview. They must sign a consent form agreeing to take the test of their "own free will without duress." The tests are administered at the company by its own security chief, a former member of the American Polygraph Association, and his officers, most of them former policemen. The personnel department leaves it all to the security men and accepts their judgment of "recommended," "not recommended," or "borderline."

Again, questions focus on drug and alcohol use, previous thefts, arrest record, and employment record. The test results are kept on file, whether or not the applicant is hired.

This company trusts completely in the polygraph; 95% of any hiring decision, according to the personnel director, is the polygraph test. No applicant who refuses a test will be hired; one who is rated "borderline," however, might be hired on a trial basis. Although the company acknowledges that a person "without a conscience" can beat the machine, it believes that all "normal" people can be quite accurately tested.

At a fast-food chain, polygraph tests are given to all prospective management personnel, the people who handle the cash. The purpose is to verify statements made on the application. If the applicant passes, his references may then be checked. All test results, including those of unsuccessful applicants, are kept on file. The polygraph company telephones its initial report within hours after the test, then follows up with a full written interpretation of the applicant's responses later on. The personnel manager was not sure what the polygraph company's credentials are, or how it was originally selected, but knew that it has a "good reputation."

This employer retests its managers annually. This is, in its judgment, the polygraph's most valuable function: to deter managers from stealing or other undesirable behavior because they know they will be caught on their next test. In a business where employees have easy access to cash and merchandise, it is important not only to get honest people to begin with but also to keep them honest. A manager who has been stealing will quit rather than face the polygraph.

A person who refuses a test will not be hired or kept on. A refusal shows immediately "he has something to hide."

A large insurance and securities firm uses the polygraph on all its job applicants, particularly to elicit information on drug use and debts. This company does not accept the polygrapher's "pass/fail" recommendation; it requires a full description of all the questions and answers, and even if the applicant appears to have told a lie, will discuss the situation with him to get the whole story. Though the polygraph is trusted, it is used as only one element in hiring decisions. Nonetheless, an applicant must be tested before hiring, and his credit status and earlier employment record might not be checked until he is already on the job.

Subjects sign a consent form, but at the insistence of the polygraph firm, not the employer. The employer believes that if there are any legal problems, they lie between the applicant and the polygrapher alone.

A retailer of fine jewelry tests its employees before hiring and annually thereafter. By assuring itself of honest and sober employees at the outset, it says, internal theft has been totally eliminated. The polygraph is believed to be more reliable than the judgment of an interviewer, because it is a machine—"personalities do not get in the way." The purpose of the test is simply to find out if an applicant has lied. An applicant who admits to earlier "misbehavior" might be hired anyway, but one who lies has no chance. It is very rare that an applicant refuses a test, though many are initially nervous and even antagonistic until the whole procedure is explained to them.

Results of all tests are filed. Those on rejected applicants are destroyed after a year.

A chain of drug stores tests all applicants, from stockroom clerk to executive. The testing is done on company premises by outside examiners carefully chosen by the head of the security department for thoroughness of training and length of experience. The applicant fills out a booklet of questions relating to drug and alcohol use, arrests, and previous employment (including firings, tardiness, absenteeism). The questions are then repeated on the polygraph test.

Tests are given only after interviews have been held and references checked. If a person lies outright, he is rejected; if his answers seem "suspicious," he may be questioned



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further. Anyone who responds affirmatively, or is shown to be lying, to questions about thefts, drugs, alcoholism, gambling, debts, or shoplifting will be rejected. So will anyone refusing to take a test.

Test results are filed. If a theft should occur, and if suspicion appears to fall on a particular employee, his test file will be pulled and restudied. Sometimes a new test will be requested. If the employee refuses, no action is taken against him, but "it does raise doubt."

The polygraph files are open only to the security director. If another firm inquires about a specific employee, the company might look at the test results to help determine what kind of recommendation to give.

The company believes it is virtually impossible to beat the polygraph. Though most applicants answer their written questions honestly, they do so because they know the polygraph will catch their lies.

One company we interviewed, a manufacturer of surgical supplies, does not use polygraphs. It believes that other methods of preventing internal theft are more effective, such as attractive discounts to employees for company products, and an elaborate security system including a large force of guards.

The company does not think polygraphs are reliable or useful in sizing up a prospective employee. Strictly framed requirements for each job, and careful interviewing and testing for specific skills and aptitudes, seem to give better results.

#### How employers use the polygraph: Analysts

There is a pattern in these employers' responses to our questions.

First, there is a trust in the machine as something more reliable than human judgment.

There is also a distrust of the strangers who present themselves for jobs. As J. Kirk Barefoot, past president of the American Polygraph Association, has explained it, "Ours has become a mobile society. Job applicants no longer generally come from an employer's immediate community; thus the employer must screen prospective employees." Employers want a practical, reliable method of weeding out the "bad" strangers from the "good."

There is an overwhelming anxiety about lack of trustworthiness, perhaps understandable in light of an estimated loss to private industry of more than \$3 billion annually from employee theft. This anxiety is often translated into an automatic rejection of all applicants who lie about anything, whatever the reason, as well as all who have had any experience of drug use, alcoholism, gambling, debts, arrests, thefts, or difficulties on previous jobs, again, whatever the circumstances. Clearly a case of "better safe than sorry." This attitude is combined with an almost reverent faith in the polygraph to weed out accurately all those who may not be "safe."

Second, most employers do not know, and seem not to wish to know, what a polygraph test involves, who gives it, or how it is interpreted. A number simply take the polygrapher's verdict of "recommended" or "not recommended" at face value, in effect surrendering their decision-making prerogative to the examiner and his machine. It is not always made clear to them on what grounds the polygrapher's judgment is based, but some employers seem satisfied not to inquire.

Few employers appear to be aware of any constitutional problems. "Privacy" is scarcely mentioned. Or, though they did not say so, perhaps they agree with Mr. Barefoot that "there comes a time when your privacy and mine has to be weighed against a company being stolen blind."

Curiously, when internal thefts do occur, employers do not rush to the polygraph if other methods of investigation are available. The reasons are not clear. Is faith in the de-

tecting powers of the polygraph not so firm after all? When disgrace, loss of a job, and perhaps even criminal charges are involved, do employers feel more qualms about privacy, self-incrimination, presumption of innocence? Perhaps when they are dealing with distinctive, real individuals whom they have hired and accepted, not just a faceless mass of unknown applicants knocking at the door, employers become more conscious of the human values, of the indignity of examining a person's mind by machine, and of the dangers of making damaging judgments in the absence of sound, independent evidence.

It appears to be common practice to keep polygraph tests on file, often for rejected applicants as well as those hired. Assurances of confidentiality are nearly always offered; usually the files are restricted to the personnel and security directors alone. Yet the reason for keeping the tests is vague. "For the record," or "in case a rejected applicant comes back," were the answers in several interviews, and one company, as noted, said it sometimes refers to the tests in making recommendations to other employers.

No mention has been made of the shocking abuses of the polygraph that come to light from time to time: the probing for details of the subject's sex life, fantasies, phobias; the search for union "troublemakers" and political "activists"; the thinly disguised threats; the wrongful accusations of criminal misdeeds. There is no need to appeal to the abuses in order to demonstrate how serious are the problems created by the common uses of the polygraph.

Here are a few:

First, pre-employment polygraph screening intensifies already rampant forms of employment discrimination, most particularly discrimination against applicants with arrest records. (Note that employers want to know about arrests, not just convictions.) Use of the polygraph test makes it all too easy for employers simply to reject anyone who admits to an arrest, or who appears (as interpreted by the examiner) to be lying about an arrest record. Whether or not the polygraph test really unmasks lies, it does encourage employers to screen out anyone whose past is less than pristine. Asking questions about arrests at an interview is bad enough, but there is at least opportunity for the full story to be told. Reliance on the polygraph saves the employer the trouble of further inquiry.

Second, submission to a polygraph test is not a voluntary act, despite the rhetoric of its proponents and the formality of asking applicants to sign "free-will" consent forms. If an applicant must take a test in order to be hired, then testing clearly is not voluntary. Nor is it voluntary when an employee suspected of theft is fired for refusing to take a test. ACLU affiliates all over the country have received complaints from people who were fired, often on some other pretext, after they balked at taking a polygraph test. Given the present state of the economy and the use of the polygraph by ever-increasing numbers of employers, it is hard to argue that as a practical matter employees and applicants are voluntarily submitting to tests. And with the conclusion that testing is in fact mandatory, the constitutional arguments citing violations of due process and the right of privacy become all the more compelling.

Third, the filing of polygraph test results virtually invites the compilation of company blacklists and their eventual pooling industry-wide. It would certainly be much easier for employers to trade among themselves lists of applicants who flunked polygraphs than go to the trouble of searching for arrest records and even checking references. If such polygraph "banks" don't already exist, they surely will in not too many years.

Fourth, the polygrapher hired by an employer has a strong incentive to err on the side of safety. His eagerness to retain the trust (and business) of his client will nat-

urally, though perhaps unconsciously, influence his interpretation of any ambiguous test evidence. Most employers rely totally upon the polygrapher's recommendation, no questions asked. Perhaps in pre-employment testing, even more than in testing related to criminal investigation, the polygrapher's biases and attitudes are crucial.

#### Legal controls

The applicant or employee who is asked to take a polygraph test has very few legal protections.

Labor arbitrators have generally refused to uphold dismissals for refusing to take a polygraph test, or to admit polygraph evidence in cases of employees punished or dismissed for alleged criminal wrongdoing, especially where there is evidence of coercion or an absence of other evidence of guilt. Many labor unions oppose the polygraph test, and some have managed to negotiate contracts prohibiting its use. A few have rules penalizing members who agree to take tests.

Thirteen states have laws limiting or banning use of the polygraph for employment purposes. These are Alaska, California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, and Washington. Most of these impose penalties on employers who try to require either employees or applicants to take tests. Some do not permit employers even to "request" an applicant or employee to be tested. However, all but New Jersey and Oregon provide for important exemptions, usually either law enforcement personnel or government employees or both.

Such exceptions seem to suggest that some legislators still have a residual faith in the efficacy of the polygraph, and that their concern for the rights of those employed by government and law enforcement agencies is overridden by their solicitude for the importance of such employees' public mission. The exceptions leave a lot of people without protection. Some states also allow "voluntary" polygraph tests. So far, the laws have not been very strictly enforced, and the penalties prescribed for violation in most instances are not particularly onerous.

A different approach, one more to the liking of professional polygraphers, has been taken by some 15 states which require the licensing of polygraph examiners. The object here is to protect test subjects from incompetent practitioners rather than to restrict testing. The 1974 Senate Subcommittee report found most of the licensing requirements insufficient and criticized such laws in general for avoiding the real issues.

Several attempts have been made in Congress to enact legislation protecting federal employees, most recently in the 93rd Congress in a bill sponsored by Senator Sam Ervin. Congressman Edward Koch is making a new try in the 94th.

It seems unlikely that attempts to persuade employers to exercise self-restraint or adoption of half-hearted legislation riddled with exceptions can stem the growth of polygraph testing. Only a flat ban will do the job. Employers, public and private, must be forced to abandon the polygraph altogether and turn to other methods of investigation which will honor the right to privacy. As the Senate Constitutional Rights Subcommittee concluded:

Expediency is not a valid reason for pitting individuals against a degrading machine and process that pry into their inner thoughts. Limits, beyond which invasions of privacy will not be tolerated, must be established. The Congress should take legislative steps to prevent Federal agencies as well as the private sector from requiring, requesting, or persuading any employee or applicant for employment to take any polygraph test. Privacy is a fundamental right that must be protected by prohibitive legislation from such unwarranted invasions/TRH.

(Research for this article conducted by Laura Kantowitz, Oberlin College, '76.)